



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-045

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22736.

The Department of Public Safety (the "department") received an open records request for information pertaining to several racetrack entities, which is collected by the department, including investigative files, department reports to the Racing Commission, (the "commission"), and intelligence background information obtained by the department from other federal, state, and local law enforcement agencies. The requestor is not the subject of any of the reports or documents. The department claims that such files are protected from disclosure by sections 2.15 and 2.16 of article 179e, V.T.C.S., and section 552.101 of the act.

Section 552.101 of the act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 2.15 of article 179e provides that:

All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding, in a

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

hearing conducted by the commission, on court order, or with the consent of the party being investigated.

Also section 2.16(b) of article 179e provides in pertinent part that:

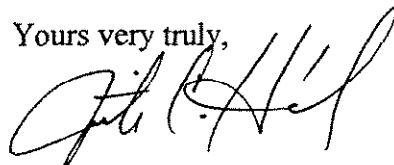
(b) An investigation report or other document submitted by the Department of Public Safety to the commission becomes part of the investigative files of the commission and is subject to discovery by a person that is the subject of the investigation report....

In Open Records Decision No. 567 (1990), this office ruled that the investigative files of the Texas Racing Commission prepared by the department were confidential under section 2.15 of article 179e, V.T.C.S., whether the information was in the custody of the commission or the department. Also in Open Records Decision No. 613 (1993), we ruled that under section 2.16 of article 179e, V.T.C.S. only the applicant for a racetrack license had a right of access to a background check on himself.

The requestor herein is not entitled to any of the requested information, since he is not the subject of any application nor do any of the exceptions under section 2.15 of article 179e, V.T.C.S. apply. Open Records Decision Nos. 613; 567. Accordingly, you may withhold all the requested investigative files, including any background investigations contained therein.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Juanita C. Hernandez
Special Assistant Attorney General
Open Government Section

JCH/MRC/rho

Ref.: ID# 22736

Enclosures: Submitted documents

cc: Mr. Patrick Woodson
P.O. Box 684243
Austin, Texas 78768
(w/o enclosures)